

1 Rule 8.3. Reporting Professional Misconduct.

2 (a) A lawyer ~~having knowledge who knows~~ that another lawyer has committed a
3 violation of the Rules of Professional Conduct that raises a substantial question as to
4 that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall
5 inform the appropriate professional authority.

6 (b) A lawyer ~~having knowledge who knows~~ that a judge has committed a violation of
7 ~~the~~ applicable Rules of Judicial Conduct that raises a substantial question as to the
8 judge's fitness for office shall inform the appropriate authority.

9 (c) This Rule does not require disclosure of information otherwise protected by Rule
10 1.6 or information gained by a lawyer or judge while participating in an approved
11 lawyers assistance program.

12 ~~(d) This rule does not require disclosure of information provided to or discovered by~~
13 ~~members of the Utah State Bar during the course of their work on the Lawyers Helping~~
14 ~~Lawyers Committee, a committee which has as its purpose the counseling of other bar~~
15 ~~members about substance abuse or psychological or emotional problems.~~

16 Comment

17 [1] Self-regulation of the legal profession requires that members of the profession
18 initiate disciplinary investigation when they know of a violation of the Rules of
19 Professional Conduct. Lawyers have a similar obligation with respect to judicial
20 misconduct. An apparently isolated violation may indicate a pattern of misconduct that
21 only a disciplinary investigation can uncover. Reporting a violation is especially
22 important where the victim is unlikely to discover the offense.

23 [2] A report about misconduct is not required where it would involve violation of Rule
24 1.6. However, a lawyer should encourage a client to consent to disclosure where
25 prosecution would not substantially prejudice the client's interests.

26 [3] If a lawyer were obliged to report every violation of the Rules, the failure to report
27 any violation would itself be a professional offense. Such a requirement existed in many
28 jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to
29 those offenses that a self-regulating profession must vigorously endeavor to prevent. A
30 measure of judgment is, therefore, required in complying with the provisions of this
31 Rule. The term "substantial" refers to the seriousness of the possible offense and not

32 the quantum of evidence of which the lawyer is aware. A report should be made to the
33 bar disciplinary agency unless some other agency, such as a peer review agency, is
34 more appropriate in the circumstances. Similar considerations apply to the reporting of
35 judicial misconduct.

36 [\[4\]](#) The duty to report professional misconduct does not apply to a lawyer retained to
37 represent a lawyer whose professional conduct is in question. Such a situation is
38 governed by the rules applicable to the client-lawyer relationship.

39 [\[5\]](#) Information about a lawyer's or judge's misconduct or fitness may be received by
40 a lawyer in the course of that lawyer's participation in an approved lawyers or judges
41 assistance program. In that circumstance, providing for an exception to the reporting
42 requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to
43 seek treatment through such a program. Conversely, without such an exception,
44 lawyers and judges may hesitate to seek assistance from these programs, which may
45 then result in additional harm to their professional careers and additional injury to the
46 welfare of clients and the public.

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